Circuit Court for Howard County
Case #CR32235

IN THE COURT OF APPEALS OF MARYLAND

No. 13

September Term, 1998

STATE OF MARYLAND

v.

KEVIN JOSEPH WIEGMANN

Bell, C. J.
Eldridge
Rodowsky
Chasanow
Raker
Wilner
Cathell

JJ.

Dissenting Opinion by Chasanow, J.

Filed: August 4, 1998

I respectfully dissent. The Court holds a defendant, who had just been determined to be in contempt by a domestic relations master, may assault a uniformed deputy sheriff in the courtroom because the deputy carried out the master's unlawful order to detain the defendant. Condoning such violence during a family court hearing, often attended by children, is not a good way to engender respect for the law or the courts.

In the instant case, we need not reevaluate the common-law rule that allows a person to use force to resist an arrest initiated by a law enforcement officer who is acting without probable cause; there is simply no justification for extending that limited doctrine to permit using force to resist a detention ordered by a robed domestic relations master presiding over a courtroom. A defendant should not be permitted to assault a uniformed sheriff in a courtroom while the court is in session, even if the defendant's detention was improperly ordered by a domestic relations master.

The Court holds, for the first time, that a domestic relations master has no power to order the immediate detention of an individual that the master adjudicates to be in contempt. While I do not dissent from that holding, the order of the master in the instant case was not a gross abuse of authority. Moreover, any limitations on the master's authority were not known to the defendant or the deputy sheriff. In courts with domestic relations masters, all non-support contempt cases are referred to the master as a matter of course. Maryland Rule 9-207 provides:

> "a. *Referral.* (1) As of Course. In a court having a master appointed for the purpose, unless the court directs otherwise in a specific case, the clerk shall refer the following matters arising under this Chapter to the master as of course when a hearing has

been requested or is required by law:

* * *

> (G) Contempt by reason of noncompliance with an order or judgment relating to the payment of alimony or support or the possession or use of the family home or family-use personal property, following service of a show cause order upon the person alleged to be in contempt...."

That same rule goes on to provide that, if a master determines someone is in contempt for not complying with a support order, the circuit court may hold an immediate hearing: "Contempt Orders. On the recommendation by the master that an individual be found in contempt, the court may hold a hearing and direct the entry of an order at any time." Md. Rule 9-207f(3). Finally, although the rule is probably only applicable to juvenile causes, the Maryland Rules have authorized masters to order immediate detention subject to ratification by the circuit court. Maryland Rule 11-111 provides, in pertinent part:

> "a. *Authority*. 1. Detention or shelter care. A master is authorized to order detention or shelter care in accordance with Rule 11-112 (Detention or Shelter Care) subject to an immediate review by a judge if requested by any party."

A master garbed in a black robe presiding over contempt hearings in a courtroom has at least colorable authority to order the detention of a person determined to be in contempt. If, in open court, the master issues an order to detain a person found in contempt, a deputy sheriff assigned to that courtroom should not be required, for his or her own safety, either to disobey the order or to get some definitive determination of the master's authority. Every judge and master who presides over domestic relations cases recognizes the volatile nature

of some of those proceedings and the need for courtroom security. By approving of an assault on a courtroom security officer who followed the order of the presiding judicial official, this Court may cause unanticipated problems.

Because we permit individuals to resist law enforcement officers who on their own initiative make arrests which are not based on probable cause does not mean we should authorize force to resist a detention ordered in open court after a contempt finding by the presiding domestic relations master garbed in a black robe. Sheriffs generally are not trained to assess the validity of orders issued by those empowered to hold judicial hearings in a courtroom; they are trained to obey the orders of the presiding judicial official. The problem in the instant case was not created by the officer assigned to courtroom security, but by the master's mistake. Whenever a deputy sheriff providing security in a courtroom obeys the order of the presiding judge or master to detain an individual, the deputy should not be open to assault even if the judge or master was mistaken. Authorizing resistance by force in a courtroom will serve no public purpose, will diminish respect for the courts, and will only result in escalating violence because there are generally enough deputy sheriffs in a courthouse to assure that resistance will be overcome by superior force. By approving the right to use violence to disobey the erroneous directive of a judicial official, this Court seems to give little importance to the necessity of maintaining order in court proceedings.

The majority apparently ignores the important distinction we made previously between an arrest for a crime and a detention based on a judicial directive. Although the master was wrong in issuing the detention order, the sheriff who was assaulted was not

wrong in obeying it. That detention based on a direct order following a contempt hearing is much more akin to an arrest based on an invalid warrant issued by a commissioner than to an arrest without probable cause initiated by a law enforcement officer. Although there is a common-law right to resist the latter form of unlawful arrest, we have not extended that right to permit resistance to the former type of unlawful arrest.

In *Rodgers v. State*, 280 Md. 406, 373 A.2d 944, *cert. denied*, 434 U.S. 928, 98 S.Ct. 412, 54 L.Ed.2d 287 (1977), this Court distinguished between a situation where an arrest is based on inadequate probable cause by the officer who made the decision to arrest and a situation where an officer makes an arrest based on a defective warrant. In refusing to extend the right to resist an unlawful arrest in the latter situation, we held:

> "At least where a citizen resists with force an illegal arrest made by a police officer without a warrant, that force is directed at the individual responsible for the improper deprivation of the citizen's liberty; but the officer engaged in carrying out the mandate of a court that he arrest an individual named in a warrant is blameless if that warrant has been issued in error, and it would be a betrayal of our duty to such an officer to say that the citizen is entitled to inflict injury on the officer because the courts had erred in issuing the warrant."

Rodgers, 280 Md. at 418-19, 373 A.2d at 951.

In *Rodgers*, the defendant resisted an arrest "made upon a warrant that was defective on its face." 280 Md. at 407, 373 A.2d at 945. The warrant was obviously invalid because it charged the nonexistent crime of assault over the telephone. We acknowledged that "the arrest was illegal as a matter of law." *Id.* At his trial for resisting arrest, Rodgers made a motion for judgment of acquittal alleging that, since his arrest was unlawful, he was thereby

entitled to use reasonable force to resist it. In the Circuit Court for Baltimore City, Judge Robert Karwacki (later a member of this Court) roundly rejected the defense argument:

> "'It's a question of where you challenge it. What I am saying, when a citizen who is approached by a uniformed police officer who makes his identity known to the Defendant under arrest and pursuant to the command of a judicial officer, that citizen must submit to the arrest and has no power or no right to resist that arrest pursuant to a warrant properly issued by a judicial officer. To rule otherwise, I think, would be to invite chaos.'"

Rodgers, 280 Md. at 409, 373 A.2d at 946.

We began our analysis in *Rodgers* by noting the general trend away from condoning force to resist an unlawful arrest. We pointed out that some states have reacted "by totally repealing the common law rule permitting resistance to illegal arrests and ordaining that a citizen submit to any arrest by a known police officer and then pursue his grievance in the courts." *Rodgers*, 280 Md. at 415, 373 A.2d at 949. We also cited substantial case law that impliedly repealed the common-law right to resist a warrantless arrest made without probable cause. We further pointed out that the "right to resist any arrest by a peace officer has been abolished by statute" in California, Delaware, Illinois, New Hampshire, New York, and Rhode Island. *Id*.

Our *Rodgers* decision followed the numerous jurisdictions that, although not yet abolishing the common-law right to resist an unlawful warrantless arrest, have nonetheless refused to extend that right of resistance to a situation where the unlawful arrest was based on a warrant, even a facially invalid warrant. Analyzing the reasons for this movement away

from the earlier common-law rule, we quoted with approval from a 1958 address to the American Law Institute by Judge Learned Hand:

> "'The idea that you may resist peaceful arrest ... because you are in debate about whether it is lawful or not, instead of going to the authorities which can determine, ... [is] not a blow for liberty but on the contrary, a blow for attempted anarchy.' 1958 Proceedings, American Law Institute, at 254."

Rodgers, 280 Md. at 418, 373 A.2d at 950-51.

In advocating "the orderly judicial process" rather than violent self-help in dealing with an illegal arrest, our decision was based on "discouraging violence."

> "We are not unmindful that under present conditions the available remedies for unlawful arrest — release, followed by civil or criminal action against the offender — often may be inadequate. This circumstance, however, does not elevate physical resistance to anything other than the least effective and least desirable of all possible remedies; as such, its rejection, particularly when balanced against the State's interest in discouraging violence, cannot be realistically considered a deprivation of liberty."

Rodgers, 280 Md. at 421, 373 A.2d at 952. One of the cases cited with approval in *Rodgers* was a decision of the Court of Appeals of North Carolina in *State v. Wright*, 162 S.E.2d 56 (N.C. Ct. App.), *aff'd*, 163 S.E.2d 897 (N.C. 1968). In that case, the defendants were convicted of resisting a public officer who had attempted to arrest them on a *capias*. On review, the court found that the *capias* was defective in that it charged the crime of "failure to comply with a court order," which was not an offense under North Carolina law. The North Carolina court held that the defendants were not entitled to resist the officers' attempt to take them into custody. The court said:

> "When an officer attempts to make an arrest without a warrant and in so doing exceeds his lawful authority, he may be resisted as in self-defense and in such case the person resisting cannot be convicted under G.S. § 14-223 of the offense of resisting an officer engaged in the discharge of his duties. *State v. Mobley*, ... 83 S.E.2d 100 [(N.C. 1954)]. But when an officer is acting under authority of process of a court, a different situation exists. In such case if the writ is sufficient on its face to show its purpose, even though it may be defective or irregular in some respect, yet the officer is protected. It would be monstrous to lay down a different rule. It would put in jeopardy the life of every officer in the land. It never could be intended that they should determine, at their peril, the strict legal sufficiency of every precept placed in their hands." (Internal citations and quotations omitted).

Wright, 162 S.E.2d at 62. That case, already cited with approval by this Court, as well as our holding in *Rodgers*, should control the resolution of the issue in the instant case.

Perhaps another reason for prohibiting the defendant's use of force in the instant case is that the defendant was not being illegally arrested for a crime but was only being briefly detained until the matter could immediately be brought before a circuit court judge. That distinction between an illegal arrest for a crime and a brief illegal detention was found significant in several recent Court of Special Appeals decisions. In *Barnhard v. State*, 86 Md. App. 518, 587 A.2d 561 (1991), *aff'd*, 325 Md. 602, 602 A.2d 701 (1992), the Court of Special Appeals refused to extend the right to resist an unlawful warrantless arrest to situations involving an unlawful *Terry* detention. That court reasoned:

> "Much of the underlying rationale in *Rodgers* for restricting the right to resist arrest is applicable here. If it were not, police officers would be subject to attack in every instance when, during the course of their investigation, they temporarily detain someone. To recognize the right to resist such momentary

> seizures, short of an arrest, serves only to expand the danger of violence. In keeping with the rationale set out in *Rodgers*, we conclude that there is no right to resist an 'illegal' stop."

Barnhard, 86 Md. App. at 527-28, 587 A.2d at 566. Moreover, in *State v. Blackman*, 94 Md. App. 284, 617 A.2d 619 (1992), the Court of Special Appeals, relying on *Rodgers* and *Barnhard*, refused to extend the right to resist an unlawful warrantless arrest to situations involving an unlawful "frisk" for weapons.

The majority abandons the foundation for our decision in *Rodgers* in favor of violence as a permissible way to challenge judicial orders. In *Rodgers*, as in the instant case, we were concerned with an arrest that was illegal because a judicial appointee, not the arresting officer, acted mistakenly. There, we explained our reason for differentiating between the right to use violence against an officer who is responsible for initiating an illegal arrest and a situation, similar to the one in the instant case, where the officer makes an arrest based on a judicially issued warrant that is defective through no fault of the officer:

> "At least where a citizen resists with force an illegal arrest made by a police officer without a warrant, that force is directed at the individual responsible for the improper deprivation of the citizen's liberty; but the officer engaged in carrying out the mandate of a court that he arrest an individual named in a warrant is blameless if that warrant has been issued in error, and it would be a betrayal of our duty to such an officer to say that the citizen is entitled to inflict injury on the officer because the courts had erred in issuing the warrant. Indeed, to sanction resistance to arrest under these circumstances would be to invite the very destruction of the entire judicial process, for we would then impose upon every police officer commanded by a warrant to make an arrest the duty to make his own independent judgment as to whether the judicial officer had properly performed his duty in issuing the warrant. Such a practice

> would make a mockery of the courts and place an impossible burden on police officers, who, however well trained in the performance of their police duties, cannot be expected to have sufficient training in the law to make a reasoned judgment as to whether the face of every arrest warrant contains any fatal defect or irregularity."

280 Md. at 418-19, 373 A.2d at 951. That well-reasoned pronouncement by this Court is directly on point and should control the disposition of the instant case. I respectfully dissent.